IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Criminal Appeal No.407 of 2000.

Date of Decision :14th September, 2007...

State of H.P. …Appellant.

Versus:

Rohit Kumar and another. …Respondents.

Coram:
The Hon'ble Mr.Justice Sanjay Karol,Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondents Pt. Om Parkash, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 10th April, 2000 passed by the Judicial Magistrate, Ist Class (4), Shimla in Criminal Case No.281/2 of 1999/98 titled as State of H.P. Vs. Rohit Kumar and another acquitting the accused persons of the charge for an offence under Sections 341, 323 read with Section 34 of the Indian Penal Code.

As per the case of the prosecution on 28th December, 1997, Navneet Kumar (PW-1) whose house is just adjoining to that of the accused persons asked them to check

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

the flowing of the water from their pipes to his house. On the same day, in the evening while he was going towards Kaithu Bazar, Shimla, the accused started beatings him resulting into injury. He reported the matter to the Police and his statement under Section 154 Cr.P.C. (Ext.PW-1/A) was recorded on the basis of which F.I.R.No.210 of 1997 dated 28th December, 1997 (Ext.PW-5/A) was registered. The investigation was carried out, the complainant was got medically examined vide M.L.C. report (Ext.PW-8/A) which showed that the complainant suffered simple injury on his body. The statements of the witnesses were also recorded under Section 161 Cr.P.C.

After completion of the investigation, the challan was presented in the court and the charges against the accused persons under Sections 341, 323 read with Section 34 of the Indian Penal Code were framed. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined eight witnesses, namely, complainant Navneet Kumar (PW-1), independent witnesses Pankaj (PW-2), Yash Pal (PW-3), Rajinder Sharma (PW-4), Jeet Ram (PW-5) (formal in nature) Head constable Ramesh Kumar (PW-6), Sh.Ravinder Mukta (PW-8) doctor who medically examined the complainant and Sh.T.R.Thakur father of the complainant as PW-7. Independent witnesses PWs-2 to 4 did not support the case of the prosecution and were declared hostile. After considering the

material on record, the court acquitted the accused persons of all the charges.

From the statement of PW-8, it is clear that PW-1 did suffer simple injury. Independent witnesses PWs 2 to 4 have turned hostile and it is clear from their deposition that they have not supported the case of the prosecution in any manner. From the statements of PW-1 and PW-7 it is borne out that there is prior litigation between the complainant and the accused persons. Admittedly, PW-7 is not the eye witness of the occurrence. In this background, the statements of PWs-1 and 7 have to be scrutinized carefully. From the statement of PW-1 it is clear that there are contradictions and improvements. PW-1 has deposed that he had lost his watch when the accused persons were giving beatings to him, but, however when confronted with his statement made to the police under Section 154 Cr.P.C. and 161 Cr.P.C., he admits that this fact was not disclosed to the police at the time of lodging the F.I.R. Further PW-7 has deposed that they had gone to register the F.I.R. in the Police Station whereas PW-1 in his cross-examination has admitted that he had informed the police on telephone from his residence. The sole testimony of PW-1 does not inspire confidence and the evidence adduced by the prosecution does not prove the guilt of the accused beyond reasonable doubt.

The judgment of the court below is based on the cogent material and is well reasoned. I see no reason to

interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

September 14, 2007(R)